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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, C.J.
HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO. 6474 OF 2005

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

HON'BLE SHRI D.R. DESHMUKH, J I Agree.

Sd/-
Dilip Raosaheb Deshmukh
Judge

POST IT FOR PRONOUNCEMENT
OF ORDER ON: **14/02/2006**

Sd/-
Chief Justice

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WRIT PETITION NO. 6474 OF 2005

PETITIONER Shyam Bihari Trivedi, S/o. Shri Laxminarayan Trivedi, aged about 55 years, Permanent R/o. Gram-Khapri, P.O. Ladhu, Via Pathriya, District Bilaspur (Chhattisgarh)

Versus

RESPONDENTS

1. State of Chhattisgarh through Secretary, Department of Agriculture, Mantralaya, Dau Kalyan Singh Bhawan, Raipur district Raipur (Chhattisgarh)
2. Chhattisgarh Rajya Krishi Vipanan Board, through its Managing Director, Purani Ganj Mandi Parisar, Raipur District Raipur (Chhattisgarh)
3. Collector being District election Officer, District Raipur (Chhattisgarh)
4. Collector being District Election Officer, District Bilaspur (Chhattisgarh)
5. Collector being District Election Officer, District Raigarh (Chhattisgarh))
6. Collector being District Election Officer, District Surguja (Ambikapur) (CG)
7. Collector being District Election Officer, District Dhamtari (Chhattisgarh)

Present : Mr. Manindra Shrivastava, learned Sr. Advocate with Shri Amrito Das, learned counsel for the petitioner.

Mr. Prashant Mishra, learned Addl. Advocate General for respondents 1, 3 to 7/State of Chhattisgarh.

Mr. Pramod Verma, Sr. Advocate with Shri Sumit Verma, for respondent No.2.

O R D E R

(Passed on 14th February, 2006)

The following order of the Court was passed by

S.R.Nayak, C.J:

In this writ petition filed as Public Interest Litigation, the demand made and declaration sought is that the electoral college to elect ten representatives of agriculturists as members of the Market Committee, as provided under Clause (b) of sub-Section (1) of Section 11 of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972 {***for short*** **"the Adhiniyam"}** should consist only of agriculturists and not others. The petitioner has not questioned the Constitutional validity of any of the provisions of the Adhiniyam. What is urged and sought is that having regard to the objects of the Adhiniyam, the goals to be achieved and reading several provisions of the Adhiniyam as a whole, it is reasonable and fair to hold that the electoral college to elect representatives of agriculturists should consist only of agriculturists and such an interpretation would advance the laudable objectives to be achieved for which the Adhiniyam was enacted.

(2) The petitioner has stated that he is a social activist and he is presently associating with a voluntary organization known as Chhattisgarh Swarna Kisan Mazdoor Sangh and the said organization though unregistered is working for the benefit and upliftment of poor agriculturists in the State of Chhattisgarh. The petitioner was earlier the President of the Anchalik Patrakar Sangh during the period 1985-86. The petitioner was also the Secretary of Press Club, Durg during the period 1991-92. The petitioner was also member of Zila Panchayat, Bilaspur during the period from 1994 to 1999. It is stated by the petitioner that he is neither

agriculturist nor owns any agricultural land nor is personally interested in any of the elections of Mandi Samitis. The petitioner has stated that, however, he is determined to render his service for the betterment, upliftment and development of oppressed and poor class of agriculturists in the State of Chhattisgarh and with that objective, he has filed this writ petition as a Public Interest Litigation.

(3) The case set-out by the petitioner, to put it briefly, is as follows:

Earlier in the undivided State of Madhya Pradesh, as it existed prior to 1st November, 2000 (comprising of present area in the State of Chhattisgarh), the State Legislature of the undivided State of Madhya Pradesh enacted Madhya Pradesh Agricultural Produce Markets Act, 1960 (Act No. 19 of 1960). During the period of about 12 years, when the said Act remained in force, number of Krishi Upaj Mandi Samiti increased from approximately 80 to approximately 230. The said Act was enacted with a view to better organization and regular buying and selling of agricultural produce and establishment and administration of market of agricultural produce. Over the years, it was felt that the interest of agriculturists, traders and the object of efficient functioning of the Mandi Samitis is not being achieved satisfactorily. This led to enactment of Krishi Upaj Mandi Samiti Adhiniyam, 1972 (Act No.24 of 1973). The new Act of 1972 continued until reorganisation of the State of Madhya Pradesh under the Madhya Pradesh Reorganisation Act, 2000. By virtue of the provisions contained in Madhya Pradesh Reorganisation Act, 2000, the Act of 1972 continues to have force and applicability in the State of Chhattisgarh also and it is now called as Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972. The State of Chhattisgarh has adapted the Adhiniyam

w.e.f. 01/11/2000 vide notification dated 16/12/2000, published in the Chhattisgarh Rajpatra (Extraordinary) dated 20/12/2000, page 78 with exception that the name has been changed from Madhya Pradesh to Chhattisgarh. The Adhiniyam seeks to provide for better regulations of buying and selling of agricultural produce and the establishment and proper administration of markets of agricultural produce in the State of Chhattisgarh. The scheme of the Adhiniyam discloses that one of the main objects to be achieved is to provide proper protection to the agriculturists who, in both the States of Madhya Pradesh as well as Chhattisgarh, are in larger population and purely engaged in cultivation and these are the agricultural based economy States. There is lot of emphasis on more and more agricultural production and there is consequent need of proper regulation of buying and selling of agricultural produce and establishment as well as administration of agricultural produce markets and also to ensure that the agriculturists get proper value for the agricultural produce they bring to the market for sale and they may not be exploited by the middlemen which exploitation the agriculturists of the area have been suffering since long time. In order that the agriculturists of the State get reasonable price of the agricultural produce which they bring to the market and they may not be subjected to exploitation by the middlemen, it is necessary and expedient that there is proper regulation of buying and selling of agricultural produce and proper administration of agricultural produce markets. To achieve this object, the Adhiniyam envisages constitution of Agricultural Produce Market Committees all over the State. After reorganisation, in the State of Chhattisgarh, as per the petitioner, there are in all 73 Agricultural Produce Market Committees. The constitution of Market Committees is provided under Section 11 of the Adhiniyam which amongst others includes ten

representatives of agriculturists as members of the Market Committee. The Adhiniyam seeks to ensure presence of ten representatives of the agriculturists in the Market Committee, which is enjoined with duties and powers under the Adhiniyam, acts in a manner so as to best achieve the objects with regard to betterment of the agriculturists. The statutory scheme, therefore, aims at proper representation of agriculturists in the Market Committees.

(4) It is stated by the petitioner that due to tremendous phase of urbanization in recent years, large areas of agricultural lands around the cities and major townships are gradually being converted into lands for non-agricultural purposes, such as, residential colonies, urban/semi-urban markets, small scale and large scale industries, education institutions, parks in urban areas and so on. It is pointed out that though large areas comprised in the Corporations and Municipalities' limits though recorded as village lands and owners as Bhumiswamis, those areas have been completely converted into urban areas where no agricultural activities take place and those owners/ Bhumiswamis are in no manner connected with any agricultural activities nor they could be regarded as agriculturists.

(5) The petitioner has contended that in order to achieve objects of the Adhiniyam and to protect and safeguard the interest of agriculturists, electoral college to elect ten representatives of agriculturists should necessarily consist of only agriculturists and no-one else and according to the petitioner, if others are included in the electoral college that would defeat the very purpose for which the Adhiniyam was enacted.

(6) In the premise of the above pleadings, the petitioner has sought for the following reliefs:

"7.1 It is prayed that this Hon'ble Court may kindly be pleased to call for the entire records concerning the case of Mandi Election and preparation of voter list from the possession of the respondents for its kind perusal.

7.2 This Hon'ble Court may kindly be pleased to issue a writ of mandamus directing the respondents to make due and proper enquiry with regard to voter list of different Mandis indicated in the petition ensuring that the voter list consists of only agriculturists and no non-agriculturist.

7.3 This Hon'ble Court may further be pleased to issue appropriate writ of mandamus directing the authorities to prepare proper voter list consistent with statutory scheme of the Act of 1972 and rules made there under for the purpose of holding election to various Market Committees in the State.

7.4 Any other relief/reliefs, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition, may also please be granted to the petitioner.

(7) Opposing the writ petition, the State of Chhattisgarh – respondent No.1 and respondents 3 to 7, who are the Collectors of Raipur, Bilaspur, Raigarh, Surguja and Dhamtari Districts have jointly filed

return/statement of objections. It is contended in the return that since the petitioner has not questioned the Constitutional validity of sub-Section (1) of Section 11-B of the Adhiniyam, the relief claimed by the petitioner could not be granted in law and it cannot be said that the electoral college to elect ten representatives of the agriculturists should consist only of agriculturists. It is pointed out that as per the provisions of Section 11-B, it is essential, *inter alia*, that the name of the voter must be recorded as Bhumiswami in village land records and every person whose name is entered as Bhumiswami in the village land records is qualified to vote at the election for electing ten representatives of the agriculturists subject to his fulfilling other qualifications mentioned in Clauses (b), (c) and (d) of Section 11-B(1) of the Adhiniyam. It is pointed out that the interest of the agriculturists is protected by the provisions of Section 11-B(2)(b) which prescribes that a person to be elected as a representative of the agriculturists should be an agriculturist.

(8) We have heard Shri Manindra Shrivastava, learned Senior Counsel for the petitioner, Shri Prashant Mishra, learned Additional Advocate General for respondents 1, 3 to 7 and Shri P.K. Verma, learned Senior Advocate for respondent No.2.

(9) Shri Manindra Shrivastava, learned Senior Counsel for the petitioner, having taken us through the definition of "agriculturist" in Section 2(b) of the Adhiniyam and the provisions of Sections 11, 11-B, 17, 32 of the Adhiniyam and the definition of "village" in Section 2(z-5) and the definition of Bhumiswami in Section 158 of the Chhattisgarh Land Revenue Code, 1959 and highlighting the objects of the Adhiniyam, would submit that the only reasonable interpretation to be given to the statutory provisions is that the electoral college to elect ten representatives of the

Market Committee shall consist only of agriculturists as voters. Shri Manindra Shrivastava would submit that the principle of 'purposive interpretation' has to be applied keeping in mind the object of the Adhiniyam and if that principle is applied, there is no difficulty to hold that the electoral college to elect ten representatives of agriculturists to the Market Committee shall consist only of the agriculturists and none else. Shri Manindra Shrivastava in support of the above submissions would place reliance on the decisions of the Supreme Court in **Karan Singh and another Vs. State of M.P. and others**[1], **U.P. Bhoodan Yagna Samiti, U.P. Vs. Braj Kishore and others**[2], **Manik Lal Majumdar and others Vs. Gouranga Chandra Dey and others**[3], **British Airways PLC Vs. Union of India and others**[4] and **Workmen of Dimakuchi Tea Estate Vs. Management of Dimakuchi Tea Estate**[5].

(10) Shri Prashant Mishra, learned Additional Advocate General appearing for the State and the District Collectors, *per contra,* would submit that the provisions of Section 11-B of the Adhiniyam are quite clear, plain and unambiguous and the Legislature has made a conscious distinction between a voter and candidate; a candidate to be a representative of agriculturists should necessarily be an agriculturist whereas a voter to elect the representative of agriculturist need not be an agriculturist and it is sufficient that such a person is a person whose name is entered as Bhumiswami in the village land records and he fulfils other qualifications prescribed in Clauses (b), (c) and (d) of sub-Section (1) of

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1. AIR 1986 SC 1506.
2. (1988) 4 SCC 274
3. (2005) 2 SCC 400
4. (2002) 2 SCC 95
5. AIR 1958 SC 353

Section 11-B of the Adhiniyam. Learned Additional Advocate General would contend that if the interpretation suggested by Shri Manindra Shrivastava, learned Senior Counsel appearing for the petitioner, is accepted, it would tantamount to the Court amending the statutory provisions where there is absolutely no scope for such interpretation. Learned Addl. Advocate General would contend that since the petitioner has not questioned the Constitutional validity of Section 11-B of the Adhiniyam, the relief sought in the writ petition cannot be granted.

(11) Having heard learned counsel for the parties, the only question for our consideration is whether the interpretation suggested by the learned counsel for the petitioner could be accepted by us by holding that the electoral college to elect ten representatives of the agriculturists of the Market Committees in terms of Clause (b) of sub-Section (1) of Section 11 of the Adhiniyam should consist only of agriculturists as voters and none else.

(12) Before considering that question, at the threshold, relevant statutory provisions need to be noticed. In terms of sub-Section (1) of Section 11 of the Adhiniyam, a Market Committee shall consist of (a) the Chairman elected under Section 12, (b) ten representatives of agriculturists, (c) one representative of traders, (d) such member of the State Legislative Assembly and House of the People in whose constituency at least fifty per cent of population resides in rural areas that is outside the local limits of a Municipal Corporation, Municipal Council or Nagar Panchayat, (e) one representative of the Co-operative Marketing Society functioning in the market area, (f) an officer of the Agriculture Department of the State Government, (g) one representative of the weighmen and hammals operating in the marketing area, (h) one

representative of the District Central Co-operative Bank, (i) one representative of the District Land Development Bank, (j) one representative of the Gram Panchayat or Janpad Panchayat or Zila Panchayat which falls within the jurisdiction of the market area. Sub-Section (2) of Section 11 of the Adhiniyam provides that all members under sub-Section (1) shall have a right to vote except the member nominated under Clause (f) and the special invitees under the second proviso to Clause (d) of sub-Section (1). Sub-Section (4) of Section 11 provides that if the electorate under Clause (b) or (c) of sub-Section (1) fails to elect a representative, the Collector shall nominate the representative of the agriculturists or traders, as the case may be. Sub-Sections (1) and (2) of Section 11-B of the Adhiniyam read as follows:

> " **11-B. Qualification to vote and to be a representative of agriculturists** – (1) Every person –
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> (a) whose name is entered as Bhumiswami in the village land record;
>
> (b) who ordinarily resides in the market area;
>
> (c) who has completed the age of 18 years; and
>
> (d) whose name is included in the voter's list prepared under the provisions of this Act and the rules made thereunder:
>
> shall be qualified to vote at the election of a representative of agriculturists :
>
> Provided that no person shall be eligible to vote in more than one constituency.
>
> **Explanation** - The word "Bhumiswami" shall have the same meaning as assigned to it in the Chhattisgarh Land Revenue Code, 1959 (No.20 of 1959).
>
> (2) No person shall be qualified to be elected as a representative of agriculturists unless –
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> (a) his name is included in the list of voters of the market area;

(b) he is as agriculturists;

(c) he is otherwise not disqualified for being so elected.

(cc) he has not more than two living children one of whom is born on or after 26th January, 2001 :

Provided that any elected representative of agriculturist shall become disqualified to hold such office if on or after 26th January, 2001 a child is born which increases the number of his children to more than two."

There is no-doubt, as rightly contended by Shri Manindra Shrivastava, that the scheme of the Adhiniyam discloses that one of the main objects to be achieved is to provide proper protection to the agriculturists against their exploitation by the middlemen. That is why, the Legislature has, in our considered opinion, given large chunk of representation to agriculturists. Not only the Legislature has reserved large chunk of representation to agriculturists in the Market Committees but it also insists that the representatives of the agriculturists shall be agriculturists. Having incorporated these provisions intended to sub-serve the interest of the agriculturists in Clause (b) of sub-Section (1) of Section 11 of the Adhiniyam and Clause (b) of sub-Section (2) of Section 11-B of the Adhiniyam, the Legislature has consciously prescribed different qualifications to a voter for electing representatives of agriculturists. A voter need not be an agriculturist in terms of sub-Section (1) of Section 11-B of the Adhiniyam. If it was the intendment of the Legislature that even a voter must also be an agriculturist, as claimed by Shri Manindra Shrivastava, we do not think that there was any difficulty for the Legislature to incorporate the condition that every voter should be an agriculturist while prescribing qualifications in sub-Section (1) of Section 11-B of the Adhiniyam. The Legislature quite consciously and deliberately

has made a distinction between voters who can constitute the electorate and persons who can be candidates for representing agriculturists. The language employed in Clause (a) of sub-Section (1) of Section 11-B and Clause (b) of sub-Section (2) of Section 11-B of the Adhiniyam is quite clear, plain and unambiguous and does not admit of more than one meaning or interpretation. It is well settled principle of interpretation that when the words of statute are clear, plain or unambiguous, *i.e.* they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Tindal, C.J. in **Sussex Peerage**[6] case has observed thus:

> "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."

In other words, when a language of a statute is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the statute speaks for itself. The results of the construction are then not a matter for the Court, even though they may be strange or surprising, unreasonable or unjust or oppressive.

(13) Viscount Simonds, L.C., in **Emperor Vs. Benoarilal Sarma**[7] has observed thus:

> "Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used".

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6. (1844) 11 Cl & F 85, p.143
7. AIR 1945 P.C. 48.

(14) Gajendragadkar, J in **Kanailal Sur vs. Paramnidhi Sadhu Khan**[8] held thus:

> "If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act".

(15) It was, however, the contention of Shri Manindra Shrivastava that since it is the policy and philosophy of the Adhiniyam to protect the interest of the agriculturists against their exploitations by middlemen, it is imperative and it will be in consonance with the legislative policy that the electorate to elect ten representatives of the agriculturists should consist only of agriculturists and such an interpretation would advance the legislative objects and policy and that such an interpretation is permissible if the Court applies the rule of "purposive interpretation". In appreciating the above submission of Shri Manindra Shrivastava, the Court, at the threshold, should warn itself that it is not entitled to usurp legislative function under the disguise of interpretation or construction and it must avoid the danger of an *apriori* determination of the meaning of a provision based on its own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. As frequently cautioned, it is all the more necessary in dealing with a legislation enacted to give effect to policies that are subject of bitter public and parliamentary controversy, for in controversial matters there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable and in such situation it is law-maker's opinion which is paramount. In other words, the Court cannot interpret statute in the

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8. AIR 1957 SC 907

light of its own views as to policy; but, it can adopt a purposive interpretation only if it can find in the statute read as a whole or in the material to which it is permitted by law to refer to as aids to interpretation, an expression of law-maker's purpose or policy. So there is no usurpation of function or danger when the purpose or object of a statute is derived from legitimate sources and the words used in a statute are given an interpretation which they can reasonably bear to effectuate that purpose or object. The question is whether this is a fit case to apply the principle of purposive interpretation as suggested by Shri Manindra Shrivastava and to hold that the electoral college to elect 10 representatives of agriculturists should consists only of agriculturists.

(16) When the material words in a statute are capable of bearing two or more constructions the most firmly established rule for constructions of such words is the rule in ***Heydon's*** case[9], which has now attained the status of a classic as opined by the Supreme Court in ***Kanailal Sur V. Paramnidhi Sadhukha***[10]. In ***Anderton V. Ryan***[11], it was held that the rule in ***Heydon's*** case which is also known as 'purposive construction' or "mischief rule", enables consideration of four matters in construing an Act; (i) what was the law before the making of the Act; (ii) what was the mischief or defect for which the law did not provide; (iii) what is the remedy that the Act has provided; and (iv) what is the reason of the remedy. The rule then directs that the Courts must adopt that construction which shall suppress the mischief and advance the remedy. This rule was explained in the ***Bengal Immunity Co. Vs. State of Bihar***[12] by *S.R. Das, CJ.*, as follows :

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9. (1584) Co. Rep. 7a, P.7b = 76 ER 637
10. AIR 1957 SC 907
11. (1985) 2 All. ER 355
12. AIR 1955 SC 661.

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon's* case (Supra) was decided that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :

1st - What was the common law before the making of the Act.
2nd – What was the mischief and defect for which the common law did not provide.
3rd - What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and
4th - The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers if the Act, *pro bono publico*".

The Supreme Court in ***Bengal Immunity Co. case*** (Supra[12]) applied the rule in construction of Article 286 of the Constitution. After referring to the state of law prevailing in the Provinces prior to the Constitution as also the chaos and confusion that was brought about in inter-State trade and commerce by indiscriminate exercise of taxing powers by the different provincial Legislatures founded on the theory of territorial nexus *S.R. Das, CJ.,* proceeded to say: "it was to cure this mischief of multiple taxation and to preserve the free flow of inter-State trade or commerce in the Union of India regarded as one economic unit without any provincial barrier that the Constitution – makers adopted Article 286 in the Constitution." The rule was again applied by the Supreme Court in similar context while

construing the changes brought about by the Constitution 46th Amendment Act in ***Goodyear India Ltd. V. State of Haryana***[13].

(17) As per the rule of "purposive construction", the Parliament is presumed to intend that in construing an Act the Court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with and the implications arising from those words, should aim to further every aspect of the legislative purpose, construction which promotes the remedy Legislature has provided to cure a particular mischief. In Section 304 of Statutory Interpretation by ***Francis Bennion*** dealing with nature of purposive construction, it is stated :

> "A purposive construction of an enactment is one which gives effect to the legislative purpose by -
> (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive – and - literal construction), or
> (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive – and – strained construction)."

In the same Section, it is further stated :

> "When Judges speak of a purposive construction, they usually mean to refer to what this Code calls a purposive – and strained construction. Thus we find ***Staughton, J.,*** referring to the 'power of the Courts to disregard the literal meaning of an Act and to give it a purposive construction, ***A-G of Newzealand v. Ortiz,*** **(1982) QB 349.** Lord *Diplock* spoke of 'competing approaches to the task of statutory construction – the literal and the purposive approach' ***Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquav) Ltd.,*** **(1971) AC 850.**

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13. AIR 1990 SC 781

> Nevertheless a purposive construction must obviously be in all cases a construction which gives effect to the legislative intention, whether or not the statutory language needs to be strained to achieve this. Most often a purposive construction, in the true sense, will be a literal construction.

In ***Carter v. Bradbeer***[14], Lord ***Diplock*** observed that 'if one looks back to the actual decisions of the House of Lords on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions. The matter was summed up by Lord *Diplock* in this way -

> "---------- I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a Court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. ***Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd.,*** **(1971) AC 850** provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been

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14. (1975) 1 WLR 1204

> inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a Court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed" ***Jones v. Wortham Park Settled Estates. (1980) AC 74.***

Thus, it is quite clear that an interpretation must in the last resort either be literal or strained. A purposive construction must be either purposive – and-literal or purposive-and-strained. The third type of construction is non-purposive–and-literal. A construction is purposive-and-literal (a) where the literal meaning is clear and reflects the purpose or (b) where the literal meaning is grammatically ambiguous and one of the possible grammatical meanings reflects the purpose. The purposive-and-literal is the commonest construction, for usually a literal construction and a purposive construction lead to the same result. ***Dillon LJ*** in ***R v. Poplar Coroner***[15] has opined that a construction where the purposive factor was allowed too much weight in departing from the literal meaning has been called 'over-purposive'.

(18) It is the duty of the Court to accept the purpose decided by the law-maker which purpose does not offend the Constitution. This applies even where the Court considers the result unjust, provided it is satisfied that law-maker really intend that result. It is quite often said and reiterated that the function of the Court is faithfully to carry out what Legislature has decreed. The rules of interpretation are designed only to settle real doubt as to legislative intention. Therefore, where the intention

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15. (1993) QB 610

is plain, it must be implemented. In Section 309 of Statutory Interpretation by ***Francis Bennion,*** it is observed :

> "It is fundamental to our modern Constitution that the judiciary owe a duty of loyalty to Parliament. Their function is faithfully to carry out what Parliament has decreed. The criteria developed to guide interpretation are designed only to settle real doubt as to legislative intention. Where the intention is plain, it must be implemented. Obviously, a particular Judge may find the policy of an enactment not to his personal liking. It is axiomatic that he must resolutely thrust aside such considerations when arriving at his decision. What may not be so obvious is that the Judge, once he or she feels certain of the intention, must also put aside more general considerations. An enactment may strike him or her as on any view unjust. That cannot affect the judicial duty. Parliament does sometimes do unjust things".

Lord Scarman in **Duport Steels Ltd. v. Sirs**[16] was pleased to sum up the position.

> ".....In the field of statute law the Judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law (and) the Judge's duty is to interpret and to apply the law, not to change it to meet the Judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the Judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the Judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be

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16. (1980) 1 WLR 142

achieved without violating the legislative purpose of the Statute may the Judge select the construction which best suits his idea of what justice requires."

(19) Therefore, in the instant case, having due regard to the clear, plain and unambiguous provisions of Clause (a) of sub-Section (1) and Clause (b) of sub-Section (2) of Section 11-B of the Adhiniyam, the Rule of purposive-and-literal construction has to be applied. If it is so applied, the submission of the learned Sr. counsel appearing for the petitioner has to be rejected. In other words, there is absolutely no scope to apply principle of purposive interpretation while construing the provisions of sub-Section (1) of Section 11-B of the Adhiniyam. If the Court were to accede to the request of the learned counsel for the petitioner, it would tantamount to the Court legislating and amending the statute and such a course is prohibited by the binding authorities.

(20) In the result and for the foregoing reasons, we dismiss the writ petition, however, with no order as to costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge